

In re) Fair Hearing No. 11,263
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Appeal of)

The petitioner appeals the decisions by the Department of Social Welfare to recoup a total of \$5,883.00 in A.N.F.C. and food stamp benefits and to impose a six-month disqualification on the petitioner's receipt of food stamps. The issue is whether the Department's decisions are in accord with pertinent statutes and regulations pertaining to the treatment of individuals who have been convicted of welfare fraud.

The petitioner does not dispute that on January 21, 1992 he pleaded nolo contendere to a charge of illegally receiving \$4,270.00 in A.N.F.C. benefits and \$1,613.00 in food stamps, for a total overpayment of \$5,883.00, for the period August 1, 1990 through March 31, 1992, because of his failure to report to the Department that a household member was employed and was receiving earned income.¹ As a result of the conviction the Court ordered the petitioner to pay "restitution" to the Department in the amount of \$3,368.00.

The petitioner contends that his nolo plea was based on his understanding that the \$3,368.00 restitution payment would be the limit of his penalty and liability to the

Department. However, nothing in the Court documents submitted by the Department reflects such a disposition by the Court.²

ORDER

The Department's decisions is affirmed.

REASONS

33 V.S.A. § 141(a) provides:

A person who knowingly fails, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose a material fact used in making a determination as to the qualifications of that person to receive aid or benefits under a state or federally-funded assistance program, or who knowingly fails to disclose a change in circumstances in order to obtain or continue to receive under a program aid or benefits to which he is not entitled or in an amount larger than that to which he is entitled, or who knowingly aids and abets another person in the commission of any such act shall be punished as provided in section 143 of this title.

33 V.S.A. §143, referred to in the above section, provides in pertinent part:

- (a) A person who knowingly violates a provision of this title for which no penalty is specifically provided shall:

. . . .

- (2) If the assistance or benefits obtained pursuant to a single fraudulent scheme or course of conduct are in violation of subsection (a) or (b) of section 141 of this title, and involve more than \$1,000.00, be fined not more than an amount equal to the assistance or benefits wrongfully obtained, or be imprisoned not more than three years, or both.

. . . .

- (b) If the person convicted is receiving assistance, benefits or payments, the commissioner may recoup

the amount of assistance or benefits wrongfully obtained by reducing the benefits or payments periodically paid to the recipient, as limited by federal law, until the amount is fully recovered.

In Fair Hearing Nos. 10,442 and 4513 the Board held that a nolo plea does not alter the Department's right to recoupment under these provisions. Furthermore, when, as here, it is clear that the petitioner was convicted by the Court of having "wrongfully obtained" the amount claimed by the Department³ (in this case a total of \$5,883.00 in A.N.F.C. and food stamps), the fact that the court also ordered the petitioner to make "restitution" of a lower amount (in this case \$3,368.00) does not alter the Department's right under § 143(b) supra to recoup from the petitioner's ongoing A.N.F.C. or food stamp benefits the remaining amount that was "wrongfully obtained."⁴ Inasmuch as the Department's decision to recoup \$5,883.00 is supported by the evidence and is in accord with the law, it must be affirmed.⁵

As to the additional six-month food stamp disqualification imposed by the Department on the petitioner, Food Stamp Manual (F.S.M.) § 273.16(g)(2) provides:

- i State agencies shall disqualify an individual found guilty of intentional program violation for the length of time specified by the court. If the court fails to impose a disqualification period the State agency shall impose a disqualification period in accordance with the provisions in paragraph (b) of this section, unless contrary to the court order.

. . .

- ii If the individual is not eligible for the program at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.
- iii Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional program violation regardless of its eligibility for program benefits.

Paragraph (b) of § 273.16, referred to above, provides that the penalty for an individual's "first violation" shall be ineligibility to participate in the food stamp program for six months. Furthermore, in determining the eligibility and benefit level of the remaining members of the petitioner's household, F.S.M. § 273.11 provides as follows, in pertinent part:

c. Treatment Of Income And Resources Of Certain Nonhousehold Members

During the period of time that a household member cannot participate because he/she is an ineligible alien, is ineligible because of disqualification for an International Program Violation, is ineligible because of disqualification for failure or refusal to obtain or provide an SSN, is ineligible for failing to sign the application attesting to his or her citizenship or alien status, or is ineligible because a sanction has been imposed while he/she was participating in a household disqualified for failing to comply with workfare requirements, the eligibility and benefit level of any remaining household members shall be determined in accordance with the procedures outlined in this section.

1. Intentional Program Violation Disqualification or Workfare Sanction

The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of disqualification for intentional program violation or imposition of a sanction while they were participating in a household disqualified for failure to comply with workfare requirements shall be determined as follows:

i. Income, Resources, and Deductible Expenses

The income and resources of the ineligible household member(s) shall continue to count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, and excess shelter deductions shall continue to apply to the remaining household members.

ii Eligibility and Benefit Level

The ineligible member shall not be included when determining the household's size for the purposes of:

- A. Assigning a benefit level to the household;
- B. Comparing the household's monthly income with the income eligibility standards;
or
- C. Comparing the household's resources with the resource eligibility limits. The State agency shall ensure that no household's coupon allotment is increased as a result of the exclusion of one or more household members.

Based on the above it must be concluded that the Department correctly determined that during the petitioner's six-month period of ineligibility the petitioner could not be included as a member of the remaining food stamp household, but that his income should nonetheless be counted

in determining the remaining household members' benefit levels.

FOOTNOTES

¹The Department submitted copies of a docket summary for the District Court, a signed Information by State's Attorney, and a signed Affidavit that clearly establish that the petitioner was convicted of having "wrongfully obtained" the exact amount of benefits now sought to be recouped by the Department.

²The petitioner may well have misunderstood the full effect of his nolo plea at the time he made it. If so, he is free to pursue this claim in Court. Unless and until he successfully does so, however, the fact of his conviction--but not his liability to the Department--is res judicata for purposes of this proceeding (see infra).

³In Fair Hearing No. 10,442, the board held that the Department did not submit evidence sufficient to determine the amount determined by the Court to have been "wrongfully obtained". See footnote 1, supra.

⁴The petitioner is required to make "restitution" of \$3,368.00 whether or not he is receiving ongoing benefits. 33 V.S.A. § 143 allows the Department to make further recovery of the amount "wrongfully obtained"--but only from ongoing benefits subsequently paid to the petitioner. In a notice to the petitioner (dated July 10, 1992) the Department acknowledged that the petitioner was making periodic payments to Probation and Parole toward the amount ordered as restitution by the Court, and stated that it would not begin recouping any further benefits until "after this amount is paid". In this respect, § 143 acts as a civil remedy for the Department in addition to the terms of criminal sentence--similar to an individual victim's right to separately collect civil damages arising from criminal acts.

⁵It is noted that ultimately the petitioner is no worse off in terms of recoupment than he would have been had he not been convicted of welfare fraud. This is because both the A.N.F.C. and food stamp regulations also require the recoupment of all benefits mistakenly overpaid. See W.A.M. § 2234.2 and F.S.M. § 273.18. Therefore, even if as a result of this fair hearing the petitioner decides to challenge his nolo plea, and his conviction is ultimately overturned, the Department need only establish that an

overpayment occurred--not that it was intentional on the petitioner's past. It is also possible that the petitioner's nolo plea allowed him to escape a jail sentence--something the petitioner must think about if he now challenges that plea. See Footnote 2, supra.

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